IMPORTANT PATENT CASE.

Woodworth Moulding Planing Machines.

United States Circuit Court.
Before Hon Judge Nelson.
JOHN LAWRENCE VS. MARCUS COLBURN AND OTHERS.

This was an action for damages on account of an alleged infringement of a patent by the defendants. The patent in question is for making wood mouldings by machinery, and was originally issued to Alfred T. Serrell, on the 16th day of May, 1848. It was subsequently surrendered for defective specification, and re issued on the 7th day of January, 1851. Under this last patent, the plaintiff, (Lawrence,) brings this suit as assignee of Serrell for the eastern half of this city, within which the alleged infringement of the defendants took place. Some evidence was introduced on the part of the plaintiff tending to show that the invention of Serrell dated back as far as the fall of 1846. That since that time the making of carpenters' mouldings by machinery had grown into very general use, and that a great saving of material, as well as of labor, had been effected by the introduction of the plaintiffs', and other similar machines. The defendants are engaged in the moulding planing business, and evidence was introduced showing their use of machines substantially like and similar to Serrell's. The counsel for the plaintiff then rested.

One of the defendants' counsel in opening the defence to the jury, remarked that there were many good grounds of defence to the action of the plaintiff, both technical and otherwise. One was that Serrell had not complied with the provisions of the patent law by describing clearly and exactly the supposed invention made by him, or the manner of making and using the same, so as to enable a person skilled in the art to make and use his alleged discovery. That Serrell's specification and drawings, at the first appearance, were infinitely complex and obscure, resembling rather a description of an intricate steam engine than a simple planing machine. His specification appeared to be full of prolixity, redundancy, inconsistency, and ambiguity; and it was very difficult to ascertain, from even a careful perusal of it, what indeed Serrell did discover or claimed to have discovered. That it would be satisfactorily proved to the jury, by conclusive inferences, that all these additions were made for the purpose of deceiving the public, and disguising his infringement and violation of other and existing patents. The machine, however, in fact, as patented by him, consisted simply of rotating planes or cutters of the required pattern for the moulding to be planed, in combination with a pressure roller, and a pressure bar or block, or stationary plane, for the purpose of controlling the material against the action of the cutters. The only apparent novelty or improvement in the whole machine was the adoption and use of a serrated, conical, or bevilled pressure roller, instead of the ordinary cylindrical pressure roller, to hold down and feed in angular or bevilled material, in order to economize the same for moulding purposes. The alleged invention of Mr. Serrell resolved itself simply into this, and nothing more; and if he could not sustain his claim to this conical pressure roller, his whole patent was a delusion and a fraud upon the public. Mr. Mootry, in behalf of the defendants, further insisted that even a conical pressure roller, in the same combination, was not new. That it would be clearly proved, that from 1843 to 1845, a similar planing machine was in use in this city, belonging to Mr. Horace V. Sigler, and used by him at that time for planing his mouldings, a period of at least five years before the date of Serrell's patent, and at least three years before the earliest assumed date of his invention. That Mr. Sigler's machine had a serrated conical or bevilled pressure roller, intended and used to hold down and feed in angular or diagonal material for moulding purposes, and that Mr. Sigler at that time invariably sawed his material into angular forms, or as near as possible into the form of the moulding to be planed, in order to economize the same, so as to enable him to make two mouldings out of one piece of wood. That this machine was in continued and successful use for about three years, and that fact would be proved to the jury by the evidence of Mr. Sigler himself, by Mr. Howe, his foreman at that time, under whose personal inspection the machine was erected, and by several of his workmen who were familiar with its successful use and construction. If, therefore, it could be proved that this machine was not a mere experiment, or for a trial, and that it never was abandoned or given up, but was an actual, running, successful machine, in daily use for years, and always doing satisfactory work, and that it was substantially like and similar to the machine long afterwards patented by Mr. Serrell, then Serrell's patent was void for want of originality. But not only would the defendants prove the successful use and similarity of Mr. Sigler's machine, but they would also prove that Mr. Serrell was in the habit of visiting Mr. Sigler's shop at that time, and must necessarily have seen the machine in operation, and the inference would, therefore, be strong, that there Serrell first obtained the idea of his subsequent pretended invention of the serrated conical roller in the same combination. But the defendants did not rely entirely on Sigler's machine. They would prove conclusively the successful use of many other similar machines, embracing the combination of the alleged invention of Mr. Serrell, long prior to his patent. The machine known as the "Anson machine" was substantially identical with Serrell's, and yet the present Honorable Judge sitting in this court enjoined the same, in 1848, as an infringement of the Woodworth patent.

But, setting aside all these defences, Mr. Mootry further insisted that the whole of Serrell's pretended invention was embraced and described in the patent issued to William Woodworth, in 1828, for a new and useful improvement in the method of planing, tongueing, grooving, and cutting into mouldings, wood and other material. This machine for planing consists of a combination of rotating planes or cutters, with pressure rollers, or any analagous device. Many attempts had been made before his time to use rotating planes for planing purposes, but all were unsuccessful, because the board chattered and vibrated under the action of the cutters, that thus destroyed and ruined it. The idea of placing a pressure roller before, and another behind, these cutters, to control the material against the action of the cutting knives, and at the same time feed it through the machine first occurred to Woodworth: and the result was a perfect planing machine, that has been in successful use from 1828 to the present time, unrivalled and unsurpassed. The history of this patent is almost a romance, taking into consideration the long and severe litigations it has passed through, and its uniform triumphant success in all. The Woodworth machine is now in common use for planing flat surfaces, such as floor plank, and by simply altering the form of the edge of the knives to the reversed shape of the moulding desired, a Woodworth moulding planing machine is produced, involving the same essential combination claimed by Serrell. To make this change required neither skill nor invention, but simple ordinary mechanical tact, which was wholly unpatentable Woodworth claimed no particular form of roller, nor did he claim any particular method of feeding; but he claimed the combination of rotating planes with controlling pressure, for planing purposes, no matter how that controlling pressure was produced, or whether a cylindrical or conical pressure roller, or a bar, or a spring, was used to effect that purpose. Now, the Serrell machine had precisely the same combination, and was therefore totally devoid of originality or novelty. The defendants would also prove that Serrell, the patentee, had recognized this fact, by asking and obtaining a verbal permission, about the time he commenced operating his machine, from the owners of the Woodworth patent in this city, to run and operate the same under that patent, and had repeatedly assured parties desirous of buying his machines that no danger or trouble was to be apprehended from Mr. Wilson or Mr. Van Hook, the then owners of the Woodworth patent. Besides, when he first obtained his patent, he claimed the combination of rotating cutters, with a pressure roller and a stationary plane, and at that time placed the chief novelty and value of his invention on that stationary plane. Having been beaten by Joseph Ritter, in 1849, in the only litigated trial ever had under his patent, he abandoned wisely this stationary plane, and, in 1851, in a re-issued patent, throws himself back on his serrated conical pressure roller. It was further contended, on the part of the defendants, that the successful use of a single similar machine, prior to the date of Serrell's alleged discovery, was sufficient to void his claim for originality, and, in the view of the law, annul substantially his right to a patent.

The facts proved on the trial, on the part of the defendants, were substantially as above stated by the defendant's counsel, as will also be seen by reference to the Judge's charge, to be found below. Some considerable difficulty existed in ascertaining exactly what was the precise invention claimed by Serrell, contained in his re-issued patent.

The trial was of considerable duration, (upwards of four days,) and the respective counsel having summed up, his Honor, Judge Nelson, then proceeded to charge the jury, as follows:—

Gentlemen of the Jury.—The patent to Alfred T. Serrell for making wood mouldings, now in question, was granted on the 7th day of January, 1851, and was a re-issued patent, having been surrendered on account of some defect in the description of the first patent. The first was issued on the 16th day of May, 1848, for an improvement in machinery for making wood mouldings, as therein described. The plaintiff, John Lawrence, shows a title to this patent in a portion of this city, within which the alleged infringement, on the part of the defendants, took place. Serrell, it appears, constructed his machine—that is, a working machine—in the fall of 1846. His brother, a witness for the plaintiff, states that in the fore part of that year, he constructed a model corresponding with the working machine subsequently built. The model of that machine, marked "No 1," is now in court.

On looking into this re issued patent of Serrell, it will be seen that a very minute and detailed description is given of the various parts comprising the machine when complete, and this was done for the purpose of complying with the provisions of the act of Congress, which require every inventor to give a description of his machine so full and exact as to enable a mechanic of ordinary skill, on examining it, to construct a similar machine.

After finishing his description of the various parts of the machine, he puts forth what he claims as new, which is this: "The combination of the feed and pressure rollers, constructed and operating substantially as described, with one or more cutters or planes, for giving the proper form or dressing to the moulding, when said combined parts operate upon material which has been sawed or cut, as nearly as may be convenient into the general form of the moulding to be produced, as herein described, for the purpose of economizing the material, or facilitating the operation."

That is his claim—the combination of feed and pressure rollers, constructed as described, with the cutters or planes to give a proper form to the mouldings.

For this alleged discovery he obtained a patent, and, *prima facie*, he is entitled to recover; and this throws the burthen on the defendants to rebut that inference, by showing that this combination is not an original one of this patentee. The claim, it will be remembered, is for the combination of pressure rollers and cutting knives, formed and operating as described, when made according to the description. This is the combination claimed as new, and appears to be all that is claimed by the patentee.

The defendants insist, as a main ground of their defence to this action, that the plaintiff, or the person (Serrell) under whom the plaintiff claims, was not the original or first inventor of this combination, or of the machine described in his reissued patent. And they allege that it is embraced—first, in Woodworth's patent; second, in the Sigler machine; and, third, in the Anson machine; all of which were prior, in point of time, to the date of the invention claimed on the part of the plaintiff. Now, Woodworth's patent was issued in 1828, for a planing machine, which was the result of a combination of pressure rollers, with rotating planes or cutters, according to the description which Woodworth gave in his specification. By means of that combination, Woodworth, as early as 1828, succeeded in making a machine of extraordinary practical utility, and which has been in operation successfully and satisfactorily from that time down to the present. Woodworth was the first person who conceived that particular combination—that is, pressure and feeding rollers, with rotating cutters, the pressure rollers keeping the board firmly in its bed, while the revolving cutters planed the board.

Many persons had attempted to make or construct a planing machine by the arrangement and combination of well known instruments or machinery, previously, even as far back as 1780 or 1790, and from that time down until 1828. But until Woodworth perfected his machine, no person ever succeeded in making a practical working planing machine. He, therefore, is entitled to the credit and profit of this discovery.

No fact is better settled in this country than the one I have just stated in respect to Woodworth. No claim under a patent has been more thoroughly and laboriously examined by adverse claimants, before courts of justice, than Woodworth's claim to this. It has been tried in various States, and many months have been consumed in the trials; and the fact is now established beyond all question, that he was the first person who, by means of this combination, constructed a successful working planing machine.

The first question, then, is, whether the claim of the plaintiff in this case, as assignee of Serrell's patent, is or is not substantially comprehended in the invention of Woodworth.

Woodworth, in his original specification, as early as 1828, in setting forth the various uses to which his planing machine could be applied, among other things stated that it could be applied to the planing of mouldings. That was one of them. It was, of course, a use which he had anticipated, and turned in his mind. He appears to have comprehended and stated very clearly the various objects and purposes to which his invention could be adapted and applied in practical use. He did not bring out or describe the changes which might be necessary to give a practical application to his invention, as it related to a planing moulding machine. Of course, if the operator choose to plane mouldings, he would know that the edge of his knives or planes must correspond with the form of the moulding to be produced. That was a matter which required no particular skill or exercise of invention, for it must have occurred to him that it would be necessary to shape the edge of the knife or plane to correspond with the pattern of the moulding he desired to make. In that way he could easily apply Woodworth's combination to the purpose of planing mouldings, after having been informed, by Woodworth, that this was one of its uses. If he desired to make a moulding on a square or flat piece of board, or plank, he could, of course, use the ordinary cylindrical pressure roller without difficulty; but if he undertook to put a moulding on an angular piece of wood, he might, perhaps, find some difficulty in using his cylindrical pressure roller. It, however, would require nothing but practice to get over this, and a man must, of course, possess some little intelligence, (hardly the exercise of inventive faculties,) to enable him to adapt his roller to the required particular purpose so as to accomplish successfully his object.

Now, it can scarcely be denied but that the precise combination detailed in Woodworth's patent, and invented by him, is to be found in Serrell's patent, to wit—the combination of the rotary planes or cutters, with pressure and feed rollers. So far, then, the two are identical. The idea incorporated in Serrell's machine is the idea Woodworth struck out in 1828.

If I understand the particular ground on which the counsel for the plaintiff endeavors to take Serrell's machine out of the invention of Woodworth, it is, that the form of the pressure feed roller is different from the ordinary form of the pressure roller in Woodworth's patent; first, that they are bevilled or conical rollers, so as to be adapted to the angular shape of the material to be planed into mouldings; and, second, that they are serrated or corrugated, so as to impinge more strongly on the wood, and so shaped as to impinge most strongly on the part to be cut away by the cutters, and so formed and adjusted as described by Mr. Serrell.

It therefore comes down to this: a difference simply in the shape and construction of the roller, and in adjusting the same to the plank. I can see no other ground upon which there can be any color for taking this alleged improvement of Serrell out of the combination of Woodworth.

Let us see how this is. As early as 1832, a corrugated or serrated pressure roller was used on Woodworth's machine, as testified to by Mr. Gibson. The mere fact, therefore, of serrated rollers being used, in combination with rotary cutters, is not a new invention, inasmuch as it was used long prior to Serrell's patent. It was, to be sure, cylindrical; but it was serrated to bite and feed the board more firmly and strongly to the rotary cutters. In addition to this fact, Mr. Gibson also testifies that he saw, in Rhode Island, about that time, a Woodworth machine constructed with a bevilled or conical roller, for the purpose of feeding and planing two clapboards at a time. This roller was in the form of a double cone, which is but two bevilled rollers put together, made so as to adapt it to the form to which the board was intended to be planed.

There is really nothing novel, therefore, in the fact, as regards the mere form of the serrated or bevilled roller; for both were used immediately after Woodworth's machine was brought into practical operation. It is not the form of the roller, whether serrated or bevilled, that can determine whether the combination is, or is not, that of Woodworth.

Now, some considerable difficulty exists, also, in the claim of Serrell, as set up by the counsel for the plaintiff, in regard to the shape of this roller. If I understand his description, his claim is not confined simply to the bevilled or conical form of roller. A part of his specification reads as follows:—"3 3, are two pair of metal standards, carrying journal boxes 4 4, taking the journals of a shaft, 5, which is prolonged outside the machine to receive a drum, c, with a belt going to the power through a pair of conical drums, by means of which the speed is regulated, and the shaft, 5, carries between the standards 3 3, the feeding roller or rollers c 1, which is formed of one or more flat rings or discs, with serrated edges, of diameters varying with the depth, at which each is to work, cut either bevilling or straight and keyed on."

The description is plain, both for bevilled rollers and straight rollers, and not confined to either.

Now, gentlemen, it will be for you to determine, on the evidence of the case, looking at the machine of Woodworth in evidence before you, the uses to which he applied it in his description, and the forms of construction and of use since the issuing of the patent in 1828; to determine, whether there is anything really new in the combination set forth and claimed in the patent of Serrell, and in the machine constructed and arranged as he has particularly described it, different from the combination of the Woodworth, so that it may be distinguished as an invention, either as to the form in which the machine is constructed, or as to the bevilled or corrugated rollers.

The next ground taken on the part of the defendants, to show a further want of novelty in Serrell's patent, is the machine constructed and used by Mr. Sigler, in Canal street, in this city. This machine was built in 1843, according to the testimony of Mr. Howe, the foreman, who built it, and contained the combination of rotary cutters and pressure and feed rollers. The cutters were made in the form that it was desired to cut the mouldings. The roller was bevilled for the purpose of being adapted to angular wood, sawed into that shape for economical purposes, and was serrated by a series of nails, or spurs, driven into it, and filed off so as to take firm hold of the material to be planed, and thus assist in feeding to the cutters. Now, this machine has been described to us by Mr. Horace V. Sigler, the owner, Mr. Howe, his foreman, Mr. Pollock and Mr. Hoffman, two of his workmen, and Mr Josiah M. Smith, the machinist who made parts of the iron work. Mr. Howe, the foreman, under whose personal superintendence the machine was made and operated two years and a half or more, has given us a detailed description of its various parts. This was at least from two to three years before the Serrell machine was invented, taking the earliest period claimed by the counsel for the plaintiff, say to the early part of the year 1846. If these witnesses are not mistaken in their description of the machine, and of its construction and working, I do not see how the plaintiff's (Serrell's) machine can be distinguished from it. The machine of Sigler was originally constructed in 1843, under the superintendence of Mr. Howe, who operated it himself in person down to the time he left Mr. Sigler, in 1845. It was partially burned in the fall of 1844, and then rebuilt, and put again into successful operation. If these witnesses are to be credited, it was not therefore a machine got up as an experiment, or for a mere trial, and then thrown away. On the contrary, it appears to have been constructed, put in operation, and worked successfully for two or three years, though it was finally given up when entirely destroyed the second time by fire, as Sigler then began to get his mouldings from his brother.

Now, this machine had knives or planes made in the various forms which they were intended to cut upon the wood. It had a bevilled roller, and it was a corrugated bevilled roller, which operated successfully in planing mouldings; and if this description of the machine can be relied on, what is there in it but the combination of Serrell's patent, described and claimed by the plaintiff? If these witnesses are or can be mistaken—if they have given a colored account, or an unreliable account of the machine, then this branch of the case constitutes no ground of defence to the action; but, if well founded, if there is no mistake, (and that is for the jury to determine as to the weight to be given these witnesses,) it seems to me that there will be great difficulty in distinguishing Serrell's machine, as a different combination, from what is to be found in this one of Sigler.

There is, also, the Anson machine. We have an account of that from Mr. Gilchrist and Mr. Duryea. Mr. Duryea states, that he saw a working machine exhibited in Nibio's Garden, at the Fair of the American Institute, between the years 1843 and 1845; that it was a machine for making mouldings, sashes, &c, by a combination of rotary cutters and a pressure roller. Mr. Gilchrist also states, that in 1846 and 1847 he constructed a great many machines of this description, (that is, the Anson machine,) and sold a great many of them, and continued to sell them, until he was enjoined as infringing the Woodworth patent, in 1848, and was thus compelled to abandon the business. He states that they were machines embracing a combination of rotary cutters with pressure rollers; that these rollers were adjustable and could be taken off and on at pleasure, and that they were in successful operation from 1846 to 1848. This machine embraces substantially the same combination as that of Serrell and Sigler, and stands on the same footing.

These are all the observations I intend making to you on the subject at issue between the parties.

Two of the jurors here put questions to the learned Judge, as to whether Serrell claimed or patented an improvement on Woodworth's machine.

The Court replied, that the claim in Mr. Serrell's patent is not for an improvement on the machine of Mr. Woodworth. His claim covers the principle involved in Woodworth's patent. He does not exclude Woodworth's combination, and then claim specially for a new mode of forming and adjusting the bevilled pressure roller. If he did, that might be a different question; but he does not put his claim on the form of the feed roller, the bevilled or serrated roller, nor upon the adjustment of the feeding roller. He does not put his claim on either of these, but he makes it cover the whole of Woodworth's combination. If Woodworth's combination is used and claimed by Serrell, his patent is void, because a material part of it is the invention of another.

If he made an improvement on Woodworth's machine in the feeding or pressure roller, he should have limited his claim to the improvement only. But the difficulty is, that it is not limited to that part of the arrangement of the machine, but covers the whole combination.

If you find for the plaintiff, the value of damages is the amount of profit he might make from his machine, if the other machine had not been introduced. But in estimating the profits, the jury should look with suspicion and care at the amount estimated, as they may appear to be much larger upon paper than in reality.

The jury after receiving the above charge from his honor, retired, and in about an hour returned for further instructions, intimating that they did not perfectly understand the case. Judge Nelson then instructed them in writing to the following effect:—

1st If the jury believe that the Serrell machine embraces the same combination as that of Woodworth, then the plaintiff cannot recover.

2d. If they believe that the Serrell machine does not embrace the combination of Woodworth, and that he was the first inventor of his combination, and that the defendant's machine is substantially the same as the plaintiff's, then the plaintiff is entitled to recover. But they must find all these facts for the plaintiff, before they can find a verdict for him.

The jury again retired, but owing to some further misapprehension of the case, were unable to agree, and were accordingly discharged.

E W Stoughton and M. G Harrington, Esquires, appeared as counsel for the plaintiff, and William Mootry and Charles M Keller, Esquires, as counsel for the defendants.

THE BROADWAY RAILROAD.

Mr. Field's Argument.
[Reported by A. W. Harcombe.]

The committee of the Common Council, to whom this project has been referred, met on Saturday last, in the chamber of the Board of Aldermen, Alderman Sturtevant in the chair.

Mr. Whiting concluded his argument on behalf of his clients, some of the remonstrants against the scheme.

Mr. David Dudley Field, counsel for the applicants, then rose and replied at length on the whole case. He spoke as follows:—

Mr. Chairman and Gentlemen of the Committee—It devolves on me to reply to the objections of the remonstrants, and to re-assert the practicability and expediency of the proposed railway. In doing so, I shall leave unnoticed the personalities of some of the remonstrants, and the threats of others, as well as the insinuations against the committee. It is new to me that it should be thought proper for those who are debating a public question, before a committee of a public body, to assail the motives of its members, while it seems a strange method of convincing their understandings, to utter suspicions respecting their intentions. But these are topics into which I shall not follow the remonstrants. Nor shall I dwell on the inconsistencies into which they have fallen, though it is fresh in your recollection how they at one time denounced the railway as altogether impracticable, and at another pronounced it so certain of success as to be of immense value, too great to be granted to a private company.

One remonstrant maintained that the pressure of vehicles into Broadway was owing to the excellence of its pavement, while another maintained the opposite, insisting that the pressure existed before the pavement was improved. One gentleman made a strong point, that the railway could not compete with the omnibuses, and in the same argument, another point equally strong, that the omnibuses would be ruined by it. Some denounced the scheme as an outrage upon the citizens, and an abuse of power, and before they sat down implored the committee to make the grant to them. One of the counsel objected that the change from car to omnibus at the cross streets would be inconvenient, but the next insisted that a system of transfer tickets was indispensable, whether the railway were built or not.

Some declared that the interest of property owners on Broadway would be disastrously affected by the railway, and while they admitted the overcrowding of the streets, proposed as a remedy the opening of side streets, but at the same time conceded that the side streets would not take off the travel unless they took off the foot passengers; and if the foot passengers went the business would go with them. Others were strenuous that Broadway was not overcrowded, and equally strenuous that the overcrowding was a good thing, and ought not to be relieved, because it would force business up town. But I will not weary you with a repetition of these inconsistencies.

The applicants for this grant have an active interest and strong prejudices to overcome. They have against them the proprietors of the omnibuses, who suppose that their interests will be materially injured by the railway. Then there are owners of property on the street, who conceive, erroneously, as I think, that their property will be depreciated by the road. These are indefatigable and vehement in their opposition, and their zeal has carried them sometimes to the length of asserting that a majority of persons interested in the street are opposed to the road. This my clients believe to be a mistake. They tell me that a majority of merchants and others doing business in Broadway have petitioned for it. We know that some of the largest land owners in the city have done so, among whom I may mention Mr. Whitney, Judge Roosevelt, and Howland & Aspinwall. More than thirty thousand persons, including seven hundred and ninety six licensed cartmen, and ninety-two licensed porters, have petitioned that the grant be made. There is also a petition signed by sixty physicians. The importance of the road, and the number and respectability of the petitioners for it, have led to the appointment of this special committee on the subject, before which the fullest discussion has been invited.

There are prejudices to be overcome. Some imagine that the general beauty and attractiveness of Broadway will be impaired. For my own part, I should be sorry to do any thing to injure the appearance of that fine street. I do not believe that this will. Certainly it will not be contended that the removal of the omnibuses will take away any of the beauties. The cars may be made at least as pleasant to look upon.

Prejudices against railways in cities I know exist, but I do not believe them to be well founded. I know that prejudices equally strong existed against railways in the country, on their introduction. Some said that the trains would never be able to run twenty miles an hour, for that life could not be sustained at that rate of speed Others said it would be impossible to use them in the winter, that the frost and snow would prevent that; and I remember to have seen a letter from a gentleman of some distinction, written when railways were first projected, prophecying their failure as means of transporting merchandise, because the jar would be too great. These prejudices have disappeared, and so will the prejudices against railways in cities. I venture to predict, that it will yet become an admitted principle, that the railway car must supersede every other mode of conveyance, on all routes where the rail can be laid, and the amount of travel will justify the expense of construction.

What is the application now before the committee? It is the application of Jacob Sharp, John Anderson, William Menzies, and their associates, "for the privilege of laying down a railroad in Broadway, from the South ferry, through Whitehall street, Broadway, to and through the Bloomingdale road, to Manhattanville" No mention is made of a particular kind of railway. You may make such regulations on that point as you think most expedient. You may require the applicants to lay down a double or a treble track as you please. If I were to express my own opinion, I should say that a double track was preferable. I should recommend two tracks only, and cars twenty-four feet long, and six wide, capable of carrying sixty persons inside and on the top. And, in my argument, I shall suppose, by way of illustration, such a track and such cars to be actually made, and I shall endeavor to show how, upon such a plan the railway is practicable, and will answer the purposes intended.

It must be borne in mind, that the application does not suppose any interference whatever with private vehicles. The carriage, the cart, every sort of private conveyance, will circulate in Broadway as before. What is proposed is, to substitute one kind of public conveyance for another; to let the car take the place of the omnibus. Instead of these heavy, noisy, racing vehicles, on high wheels, which now encumber the street, stunning you with their noise, battering the pavement, and tearing from one side of the street to the other, we should have cars, on low wheels, moving upon smooth iron rails, on a fixed line, making little noise, and doing no injury to the pavement.

The applicants allege:—

1. That they can lay a double or treble track of iron rails even with the pavement, and insert in it a groove so narrow, that no foot or wheel can enter it.

2. That they can place on these rails carriages capable of taking sixty persons inside and on the top, and move them with two horses at the rate of five or six miles the hour.

Is this practicable? There can be no manner of doubt that a rail, flush with the pavement, can be laid, so that a carriage crossing it in any direction would feel no jar; and if a flange of half an inch in width will be sufficient to guide the car, the groove may be made so narrow that no wheel used in Broadway can get into it Upon this point we have the evidence of Mr. Edwin Smith, civil engineer, who says, in a letter which I hold in my hand, that such a flange would be sufficient, if the cars do not move at a greater speed than six or seven miles the hour As to the cars, it is beyond question that they can be built of the kind and capacity I describe.

If, then, the plan is practicable, our next inquiry is, what object is to be gained by it, what good will it serve? For though it be never so feasible, yet if it will answer no good purpose, it ought not to be undertaken.

This brings me to the main argument. What are the objects to be sought? They are these:—

1. A better mode of conveyance for passengers,
2. The relief of Broadway.
3. Increased facilities of communication between the upper and lower parts of the city.

Here I will venture to state the following propositions:—

First. That if there were ample room in Broadway for all the omnibuses necessary to carry all the passengers who do now or may hereafter need the conveyance, the substitution of cars for omnibuses would be desirable, because the cars are easier, quicker, cheaper for the passengers, less burdensome to the city, and less annoying to persons passing or living in the street.

Second. That there is not sufficient room in Broadway for the omnibuses we now have, much less for those which will be necessary hereafter, if that mode of conveyance is to be perpetuated; or, in other words, that Broadway should be relieved, and increased facilities given to the intercourse between the upper and lower wards.

Third That a railway in Broadway is a measure indispensable to the accomplishment of these objects.

Fourth. That there are no solid objections to such a railway, and that, therefore, the application ought to be granted.

These propositions I will now endeavor to enforce.

First. The rail car is preferable to the omnibus as a mode of conveyance. It is easier, as I think everybody will concede who has ever compared one with the other. One is a uniform motion upon a smooth rail with very little jar; the other is unequal, liable to jolt, and made more disagreeable by the constant practice of racing. Then the car is quicker. Why is it quicker? It is because a less force is necessary to move the same weight upon the iron rail. One of the gentlemen who argued for the remonstrants, asserted, indeed, that the Russ pavement had as little friction as the iron rail; but this, Mr. Chairman, is a palpable extravagance.

Gillespie, in his treatise on roads, mentions an experiment which he made in London, on a stone trackway, on which the friction was reduced to one-one hundred and eightieth of the weight; he gives the friction on railroads as one-two hundred and eightieth of the weight. The stone trackway mentioned by him was smooth, not grooved and roughened as is the Russ pavement; of course the latter has nothing like the advantage of the stone trackway in respect to friction. Mr. Edwin Smith, whom I have already mentioned, estimates the proportion between the iron rail and the Russ pavement, as one to five in favor of the rail.

The railway is cheaper than the omnibuses, because less expensive to construct and work. On this point I take the calculation of the remonstrants themselves, who have stated the capital invested in omnibuses, running on Broadway, at $2,500,000; and the entire cost of the proposed railway, furnished complete, at $250,000. Here, then, is a gain in proportion of ten to one. But this is not all. Now, as I shall show hereafter, sixty one cars will do all the work of 527 omnibuses. Allowing two horses to an omnibus or car, we have 122 horses doing the work of 1,054, being a gain of 932 on each set, and as each vehicle has three sets of horses during the day, the total gain in the number of horses, necessary to work the two kinds of conveyance, will be 2,796.

The railway is less burdensome to the city, because the expense of the pavement is vastly less; that must be apparent to every one We all know that the great injury done to the pavement of New York is caused by the omnibuses. Even the Russ pavement, after two or three years service, is now in some places materially indented.

Besides, the railway will be less annoying to persons passing or living on the street. There will be less noise. Persons walking in Broadway are unable to converse with any pleasure, the noise of the omnibuses is so great; the cars are almost noiseless, so much so, that it is sometimes thought necessary to put bells on the horses, to give notice of their approach. There would also be less dust. What makes the dust in Broadway? The chief cause of all that fills our eyes and lungs every morning is the omnibuses.

Again, if you put down a railway there will be less obstruction than is caused by the 527 omnibuses, for which will be substituted sixty one cars. Can they cause the same obstruction to passengers? There is also less danger, because you know when the cars are coming, but you do not know when an omnibus is coming; you must look out in every direction for omnibuses, as they come racing up and down Broadway, and get out of their way.

I pass now to the next proposition, and that is, that Broadway must be relieved, and increased facilities given to the intercourse between the upper and lower wards in the city.

First, is Broadway overcrowded? Upon this subject every man has the evidence of his own senses. We know that no person, in the morning or evening, can pass up and down Broadway without encountering serious obstructions; you are stopped at half a dozen places, especially in the vicinity of Fulton street and Maiden lane; if you are in an omnibus or carriage you are stopped of course, and three or four times, before you can get to the Park or Trinity Church

The statistics of travel in Broadway have been carefully taken, once in August, and as it was suggested that travel was less at that time of the year, the observations were repeated in October. The results are nearly the same; so that I shall make use chiefly of the first table, the same that was published some weeks ago, and stated in the opening argument of my associate.

What do these statistics show? Look at them for a moment. What is the number of omnibuses passing the Museum daily? Six thousand three hundred and seventy-three. What is the number of other vehicles? Nine thousand four hundred and forty two, making the total number passing the Museum during the day, fifteen thousand eight hundred and fifteen, giving an average of one thousand two hundred and sixteen per hour. During the hour of heaviest travel there are one thousand four hundred and forty, or from twenty to twenty-four a minute.

Supposing each omnibus to have two horses—some of them have four; but supposing each to have two, and half the other vehicles to have the same, and the rest one, we have during the day 26,909 horses, or 2,069 an hour, and during the heaviest hour of travel, 2,424, or from 34 to 40 a minute Thus we have during the day 15,815 vehicles, and 26,909 horses, and during the heaviest hour 1,440 vehicles, and 2,424 horses, making 24 vehicles and 40 horses every minute. And yet gentlemen tell me that Broadway is not overcrowded! This is exclusive of any crossing at any portion of the street.

It is, in fact, dangerous to drive in Broadway, and still more dangerous to cross the street below the Park. No one can cross without first looking right and left, and then running with all his might. Some say this state of things is attractive; that is a matter of taste.

But, says one gentleman who addressed you on behalf of the omnibus owners, there is no occasion to legislate about this; everybody goes up Broadway voluntarily, and why should you come in and help them? Of all the arguments used in this discussion, that, I think, is the most extraordinary. What! do nothing to facilitate the means of communication because a man uses the present voluntarily! Do nothing to blow up the rocks of Hellgate because a vessel goes there voluntarily! Why, then, increase the facilities of travel? Why build light-houses? Why build any improved road? Whoever goes on a common road goes voluntarily, but a man would be thought insane who should give that as a reason for not making it better.

So far I have confined my argument to the question whether Broadway ought to be relieved There is another consideration of great importance, and that is the increased facilities between the upper and lower parts of the city which our condition demands.

These increased facilities are demanded of you—you are bound to give them—you must give them. The omnibuses, of course, are powerless to do anything more for us—they cannot give us increased facilities. There are as many of them in Broadway as can be run there. They cannot carry more persons from the upper wards to the lower. If that be so now, how long will it shortly be?

The city is probably increasing at the rate of 60,000 a year—in ten years 600,000 persons will be added to our population, occupying probably sixty streets. Ten thousand is a large estimate for each street, including the adjacent avenues, and making allowances for squares and public buildings, so that, if you go on increasing at the rate of the last five years, in the year 1863 this city will be compactly filled from Twenty-third to Eighty third street. This supposes that the draining off of our population to the adjacent cities, to go on as it has done; but that ought not to continue, and the government of the city ought to do what it can to prevent the drawing off of our population from the upper wards to Brooklyn, Williamsburg and Jersey City. They go there for the reason, that business being done in the lower wards of the city, they will live where it is convenient for business If you do not give them the means of easy communication with the upper parts of our own island, they will go to the adjacent places. It is a great mistake to consider this city confined. We are an island, and Williamsburg, Brooklyn, and Jersey City, are in fact adjuncts of the First ward, and persons go over there because they can reach the lower parts of the city by the boats easier than if they lived in the upper parts.

If you had means of communication between the upper and lower wards, what would have been the results now? Brooklyn has a population of one hundred thousand; Williamsburg upwards of twenty-five thousand. Now, if these one hundred and twenty-five thousand had remained in the city the population would have now reached to Thirty-sixth street. The learned gentleman who last addressed you (Mr. Whiting) stated that he thought it unwise to give facilities of communication between the upper and lower parts of the city, because you ought to force the centres of business "up town;" his language is—"you will do a great disservice to the city by increasing the facilities of communication."

The argument is this: "If you don't increase the facilities, business will follow the population up town." Now this argument omits an important fact, which is, that persons who do business on this island can live elsewhere.

This island is not isolated, but is part of a large territory, and if you do not increase the communication between the upper and the lower wards, men doing business in the lower wards will go to adjacent places. Business will choose its place; all the city government can do is to give facilities of communication, and leave business to take its own course.

For these reasons, I insist that Broadway must be relieved, and that you must give increased facilities of communication between the upper and lower wards of the city; that the strongest considerations in respect to the improvement, the health, and the population of the city imperatively require it.

I come now first to the third proposition, which is, that this relief of Broadway, and these increased facilities of communication, cannot be had without changing the mode of conveyance in that street; that the railway will do it, and nothing else will.

Now, what will a railway in Broadway do? Let us look at the figures:

Sixty cars will take, at sixty each, three thousand six hundred passengers each hour.

100..6,000
120..7,200

That statement during the hour of heaviest travel, gives two hundred and seventy-one omnibuses passing the Museum up Broadway, taking two thousand eight hundred persons and two hundred and fifty-six omnibuses passing down, with eight hundred and thirty-three persons.

Now, supposing each car to take sixty persons, these would be taken by forty seven cars up, and fourteen cars down. The omnibuses require one thousand and fifty-four horses, each omnibus having two horses These cars take one hundred and twenty-two horses; therefore, by substituting sixty-one cars and one hundred and twenty-two horses for five hundred and twenty-seven omnibuses and one thousand and fifty four horses, we take all the passengers, and thus get rid of four hundred and sixty-six vehicles, and nine hundred and thirty-two horses every hour, or during the thirteen hours which the vehicles run, we get rid of six thousand and fifty-eight vehicles, and twelve thousand one hundred and fifty-six horses, moving the same number of passengers. Will it be said that the car is larger than the omnibus, and therefore takes up as large an amount of room, and so we gain nothing in that way? Let us, then, compare them.

I will assume the car to be twenty-four feet long and six feet wide, and how much does that give you as the superficial contents of the car?—one hundred and forty-four feet. Now what is that of the omnibus? I will take an omnibus of the smallest dimensions, with a superfices of forty-nine and a half feet, that is nine feet long and five and a half feet wide—sixty-one cars will then take a superficies of eight thousand seven hundred and eighty-four square feet. What is the superficies of the five hundred and twenty-seven omnibuses which are required to move the same amount of passengers? The superfices of five hundred and twenty-seven omnibuses is twenty-six thousand and eighty-six feet, and if you add the superficies taken up by the horses—that is supposing they take ten feet in length by five feet wide—fifty square feet, you gain in horses twenty-three thousand three hundred feet, making a total gain in superficies of horses and vehicles of forty-thousand six hundred and two feet. Is not this relieving Broadway? Will the railway give increased facilities of communication between the upper and lower wards of the city? Let us see what it will do. Sixty cars, as I have stated, will take thirty-six hundred passengers and one hundred cars will take six thousand, so that one hundred cars, moving thirteen hours, will take seventy-eight thousand persons. Now, the largest number of persons taken up during the whole thirteen hours by the omnibuses, is seventeen thousand and thirty-nine, and if all the omnibuses moved up Broadway during the day were filled with as many as they could take, they could take only forty-one thousand one hundred and one persons, that is to say, one hundred cars would take four and a half times as many passengers as the omnibuses do now take, and twice as many as they could take if stowed to their utmost capacity.

Ninety-four cars up, and twenty-eight down, will take double the number of passengers now taken in the hour of heaviest travel. Five hundred and twenty-seven omnibuses will take up as much room as one hundred and eighty-one cars, which one hundred and eighty-one cars would take ten thousand eight hundred and sixty persons both ways, or one hundred and forty-one thousand one hundred and eighty during thirteen hours. The comparison may be stated thus: the same number of persons may be carried through Broadway, taking the vehicles alone into consideration, at about one-third as much of the street, and, taking the horses also into consideration, at less than a quarter; while the same use of the street during the day, at least one hundred and seven thousand six hundred and ninety-seven more persons would be taken than are taken now, and fifty-eight thousand nine hundred and sixty-eight more persons than could be taken by the present number of omnibuses. The gentlemen on the other side may answer this argument if they can.

If I am right in this, I have shown that a railway, as proposed, will relieve Broadway, and will give additional facilities of communication between the upper and lower parts of the city.

The form and situation of this city indicate the system of public conveyances which we ought to adopt. The island is long, with deep water sufficient for the heaviest ships on both sides. What we want is one great trunk line through the centre of the island, with branches to the shore on both sides. Broadway and Bloomingdale road are in the centre, and on the ridge nearly midway between the two rivers. There the trunk line should run, and that must be a railway, because no system of omnibuses would ever be sufficient.

What expedients have been suggested in place of a railway in Broadway? The opening of side streets and running cars or omnibuses there. This would not answer the purpose, unless the foot passengers would go there. You may open side streets, but you will not take off the traffic from Broadway unless you can force foot passengers into the side streets; public conveyances must go where foot passengers are. You cannot divert the foot travel into a side street, for the reason that you cannot move Broadway into the side streets; the shops and hotels there are the great points of attraction, and you cannot move them. What side streets would you open? The only streets contemplated are Pearl street, William street, Church and Greenwich streets. Pearl street and Greenwich street are too far from Broadway to relieve it, and so is William street. Church street is the only one which will do any good. The expense of that would be immense. But suppose it opened to the battery, and lines of omnibuses or railway running there. Would Broadway be relieved? The way passengers—that is, those who get in at the lower part of the city, wishing to go to a place in Broadway, south of Bleecker street, would not leave Broadway, go into Church street, go up and then return to Broadway It is only the through passengers who would think of taking the Church street line.

Now, would any person in Broadway, or east of it, go over to Church street? He would not, if there were any public conveyance in Broadway; he would take that because it was nearer, and because the line through Broadway is more agreeable. If, however, you seek to force the travel into Church street, by excluding the public conveyances from Broadway, you at once depreciate the value of the Broadway property. The foot passengers will go where the public conveyances are, and where the passengers go the business will go. The certain effect of opening Church street, and forcing public conveyances out of Broadway into it, is to lessen the business of Broadway, and to transfer, by degrees, the shops and hotels to the side street.

I now come to the fourth proposition, that there are no valid objections to a railway in Broadway. First, as to surface of the street; if the rail be laid even with the pavement, and the groove be made so small that neither foot nor wheel can enter it, the surface cannot be injured. If the rail were laid to-day, and no cars were ever put upon the street, not the slightest inconvenience would be felt from the presence of the rail. Then, as to the occupation of the street by the cars, or, in other words, the substitution of the cars for the omnibuses, I have already shown that the cars will look as well as the omnibuses; there will be fewer of them, they will take up less room, they will be confined to a fixed line, they will make less noise and dust, and be quicker and easier.

Will they interfere with the use of the street for private vehicles, or foot passengers? The latter will be better off, certainly, on the sidewalks, because they will be more quiet, and in crossing there will be less danger. Then as to vehicles, there will be room between the cars and the sidewalk for a cart to stand back to the walk, or for two carriages to pass each other; if in two or three places at the lower end of the street, the carriageway is a little less than forty-two feet wide, that would occasion but a slight and temporary deviation from the general course of travel.

But it is said that the cars will be so frequent as to make it dangerous for a carriage to cross from one side to the other. Let us look at this now; sixty cars starting every minute and moving in the same direction at the rate of six miles an hour, will be five hundred and twenty-eight feet apart, from the centre of the train to centre. Allowing twenty-four feet for the length of the car, and ten for that of the horses, thirty-four feet in all, deducting that from five hundred and twenty-eight, leaves four hundred and ninety-four feet from the end of one car to the horses of the succeeding. And taking sixty cars each way, one hundred and twenty in all, will leave two hundred and thirty feet, and ninety each way, one hundred and forty-two feet. It is not probable, that one hundred and eighty cars will be often upon the road at the same time, but supposing them to be there, will there be any inconvenience or danger in a carriage passing from one side to the other, between cars one hundred and forty-two feet apart? Not the least.

How long does it take a carriage to cross Broadway, say from Maiden lane to Fulton street? About six seconds. Observations made the other day upon the time, taken by carts loaded and unloaded, in crossing from Maiden lane to Cortlandt street, showed that the average time for a single cart was 6½ seconds, and for three carts in succession, eleven seconds. The legal objections to granting this application, have not been very strongly insisted upon, and I do not know that it is necessary for me to bestow much attention upon them. If the power of the Corporation to grant a railway be denied, I have only to say that the Corporation have already exercised it in the cases of the Harlem Railroad, the Hudson River Railroad, and the Sixth and Eighth avenue roads. Those precedents will doubtless be sufficient for this committee. Besides these cases, the Supreme Court, in the case of Drake against the Hudson River Railroad Company, settled the question, until a reversal by the Court of Appeals, and there I leave it.

Having thus, Mr. Chairman, gone over and endeavored to establish these four propositions—First, that the rail car is in itself a better mode of conveyance than the omnibus; second, that Broadway ought to be relieved, and increased facilities given to connection between the upper and lower parts of the island; third, that a railway in Broadway will accomplish these objects, and that nothing else will: and fourth, that there are no valid objections to such a railway—it follows, I submit, that the application of my clients ought to be granted. But, say the remonstrants, "No: this application ought to be made to us."

Mr. Chairman, this application ought to be granted to those who have applied for it, and not to those who opposed it, for two reasons:—

First—Applicants have had the labor, vexation, and expense, of sustaining their application, meeting the vehement and protracted opposition it encountered, of taking upon themselves the responsibility of providing the means for carrying through this project. They are first in time, and so between rival applicants, they who are first in time ought to be preferred, according to all usage and all reason. "First in time, first in right," other things being equal, is a maxim of law and justice. In the next place, the remonstrants have been before you for nearly a month—from the 9th October to the 6th November—urging every objection, resorting to every expedient to embarrass and delay the grant of the road, and moving in all directions to get up remonstrances against it. Surely these are not the persons to make and work this railway. They have been incessant in declarations that they do not believe in it; some contending that it is impracticable, others that it is inexpedient, and all denouncing you in advance for granting it, as guilty of a gross abuse of power.

No rule can be safer than not to trust an undertaking to the hands of its enemies. If these remonstrants believe in the project, they ought not to be here opposing it; if they do not believe it, they ought not to have charge of it.

You are told that my clients are seeking their own profit. This does not come with a very good grace from gentlemen who come here for their private interests, and finish by asking the grant for themselves. But what is there in the objection itself? My clients are not adventurers; they are men of property, some of them holding land in Broadway, and their characters are a guaranty that they will keep their engagement with the public? And what if one of their motives be personal profit? Are public enterprises, which involve a large outlay of money, commonly undertaken from mere benevolence, by men who spend without expecting a return. Where is the railway that has been built by charitable contributors, without hope of dividends or other private benefits? No, the government gives the privilege for the public good, but the individuals construct the work for the hope of reward for their expenditure. And they are wise statesmen who know how to make the desire of private emolument subserve public advantage.

This is not a question which concerns the owners of property on Broadway alone. Every citizen who uses the street has an interest in it. We, the citizens of New York, have as good a right to dictate to the owners how they shall use their lots as they have to dictate to us how we shall use the street.

The conditions of the grant are matters to be stipulated between the Common Council and the applicants. I am not here to discuss them. I am here only to discuss the general question Let that question be approached with impartiality and candor. Let it be decided without regard to clamor on the one hand, or solicitation on the other.

My clients ask no more than that their application shall be carefully considered, and dispassionately acted upon, not in a narrow spirit, but with a wise forecaste. What this city wants is a comprehensive plan of public improvements, looking to the present and to the future. This is now the third city in Christendom; in ten or fifteen years it will be the second; and the child is born who will see it the first. Fortunate will it be for us if its conveniences and embellishments keep pace with its enlargement.

Superior Court.—Part Second.
Before Hon. Judge Duer.

Nov. 11.—*William Johnston, against the Wilkesbarre Coal Company.* This was an action brought by the plaintiff against the defendants, for raising a canal boat, sunk with a load of coal, in Williamsburg. The allegation of the plaintiff is, that he raised the boat, and is entitled to a reasonable sum for his labor. The defendants say that they made a written contract, and produced a paper signed by one William Spence, the agent of the company, but not signed by the plaintiff. This paper states that the work was to be done for $150. It is also alleged by the defendants, that the work was not properly done. Testimony was given, that the paper was not drawn in the presence of the plaintiff, but was written afterwards by the agent, Spence; that the boat was raised, and coal taken out; that it was a most difficult job. The jury returned a verdict for the defendants.

EXECUTIONS.—Lucy, a negro girl who was sentenced to be hung at Richmond on the 22d ult., for the murder of her infant child, was respited by the Governor of Virginia till Nov. 12th, this day. A slave named Miles, convicted for committing a rape upon a white girl in Princess Ann county, Va., was sentenced to be hung on the 12th of November, to-day.

POST OFFICE OPERATIONS.—Established—Roe's Station, Cambria county, Penn., Enoch Rees postmaster; Sabbath Rest, Blair county, Penn., William Beigle postmaster. Discontinued—Pittsburg, Dark county, Ohio; Lathrop, Susquehanna county, Penn